

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO
ALL CLASS ACTIONS

**THIRD DECLARATION OF MERLE M. DELANCEY IN SUPPORT OF BAXTER
HEALTHCARE CORPORATION'S OPPOSITION TO
PLAINTIFFS' MOTION FOR SANCTIONS AND
DEFAULT JUDGMENT AGAINST BAXTER HEALTHCARE**

I, Merle M. DeLancey, declare under penalty of perjury under the laws of the United States of America that:

1. I am one of the attorneys for Defendant Baxter Healthcare Corporation and have personal knowledge of the matters set forth herein.
2. On May 26, 2006, I wrote a detailed letter to plaintiffs' attorney, Elizabeth Fegan, describing Baxter's online document repository. Several days later, on June 1, 2006, another of Baxter's attorneys wrote a follow-up letter to Ms. Fegan and provided her user access to the repository.
3. On June 23, 2006, our firm was contacted by Elizabeth Fegan regarding technical difficulties with the program. Tina Reynolds, another Baxter attorney, replied with a solution. Not until a full two months later, on August 25, 2006, did Ms. Fegan inform us that she still could not view the documents. We contacted the vendor and promptly resolved the situation.

The vendor informed us that an attorney for plaintiffs had attempted to gain access in violation of the licensing agreement and that the system had only been accessed twice in over the preceding two-and-a-half month period.

4. Over fifty percent of the documents available to MDL plaintiffs are accessible through the electronic repository.

5. Attached are true and correct copies of the following exhibits:

- A. May 26, 2006 letter from Merle M. DeLancey to Elizabeth Fegan
- B. June 1, 2006 letter from Shamir Patel to Elizabeth Fegan
- C. June 23, 2006 email conversation between Elizabeth Fegan and Tina Reynolds
- D. August 25, 2006 email conversation between Elizabeth Fegan and Tina Reynolds

Dated: September 6, 2006

/s/ Merle M. DeLancey

Merle M. DeLancey

CERTIFICATE OF SERVICE BY LEXIS NEXIS FILE AND SERVE

Docket No. MDL 1456

I, Shamir Patel, hereby certify that I am one of the attorneys for Defendant Baxter Healthcare Corporation and that, on September 6, 2006, I caused copies of the THIRD DECLARATION OF MERLE M. DELANCEY IN SUPPORT OF BAXTER HEALTHCARE CORPORATION'S OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS AND DEFAULT JUDGMENT AGAINST BAXTER HEALTHCARE to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File and Serve.

/s/ Shamir Patel
Shamir Patel